Filed 3/16/09 In re L.T. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re L.T., a Person Coming Under the Juvenile Court Law.	B210408 (Los Angeles County Super. Ct. No. CK68156)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. L.L., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Debra L. Losnick, Juvenile Court Referee. Affirmed.

John Cahill, under appointment by the Court of Appeal, for Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, Kirstin J. Andreasen, Senior Associate County Counsel, for Respondent.

INTRODUCTION

L.L. (mother) appeals jurisdictional and dispositional orders of the juvenile court pursuant to Welfare and Institutions Code sections 358 and 360[1] with respect to her daughter, L.T. (child). Mother argues that (1) no substantial evidence supported the juvenile court's jurisdictional finding that child was at risk due to incidents of domestic violence that occurred before child was born; (2) the juvenile court abused its discretion by ordering mother to attend domestic violence counseling as part of her case plan; and (3) mother's case plan was unreasonable because the Los Angeles County Department of Children and Family Services (DCFS) failed to investigate prior to the disposition hearing whether reunification services were available to mother during her incarceration by federal authorities. For the reasons stated below, we affirm.

BACKGROUND

A. Proceedings Relating to A.D.

When the relevant proceedings commenced, child (L.T.) was not yet born. Mother was living with child's father, C.T. (father). Mother had a seven-year old son, A.D., whose father was K.D. Mother and K.D. had separated in 2001 or 2002. A.D. is not the subject of this appeal.

On May 11, 2007, father was driving a car registered to mother. Police officers conducted a traffic stop; father fled on foot carrying a large shopping bag. Father was apprehended. He was carrying one pound of methamphetamine in the shopping bag.

Police executed a search warrant at mother's residence. Mother and A.D. were present. Police recovered over $200,000 in cash, a loaded semi-automatic handgun, several baggies of methamphetamine and a small amount of marijuana. Mother was arrested.

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[1] All statutory references are to the Welfare and Institutions Code unless stated otherwise.

A.D. was taken into protective custody by DCFS and later placed with his paternal grandmother. DCFS filed a petition pursuant to section 300. The juvenile court ordered A.D. detained.

In June 2007, DCFS filed an amended petition. Mother and K.D. waived their rights to a hearing. The juvenile court sustained the allegations in the amended petition that (1) mother had established a detrimental and endangering home environment for A.D. because a handgun and narcotics had been left where A.D. could access them and because father sold illicit drugs from the family's home; (2) mother was a methamphetamine user, which periodically rendered her incapable of caring for A.D.; and (3) K.D. had a history of domestic violence.

In July 2007, mother and K.D. had a "violent confrontation" during a monitored visit with A.D. As a result, DCFS asked mother to attend domestic violence and anger management counseling as part of her counseling regimen. In August 2007, mother informed DCFS that she was pregnant. In September 2007, DCFS reported that mother was enrolled in a six-month recovery program and was scheduled to begin domestic violence classes once she completed her parenting class.

In October 2007, mother was residing with father in Whittier when police raided a building owned by father. Police recovered 15 firearms, including five assault rifles; $85,000 in cash; 65 pounds of marijuana; a small amount of methamphetamine; and laboratory equipment used for drug manufacture. Father and mother were arrested.

In December 2007, DCFS reported that mother had been sentenced to one year in county jail on the charges stemming from the police search in May 2007. The charges stemming from the October 2007 raid were still pending.

B. Detention—Child

In February 2008, mother was released on probation after serving four months of her sentence. Father remained incarcerated on charges stemming from the October 2007 raid. Child was born on March 1, 2008. Mother began participating in voluntary family maintenance services with respect to child on March 5, 2008.

On March 13, 2008, as part of a large-scale investigation into drug trafficking by the Puente 13 street gang, state and federal law enforcement agents executed search and arrest warrants at several locations, including mother's apartment; maternal grandmother's home in La Puente; and paternal grandfather's home in Arizona. Law enforcement informed DCFS that, during the search of mother's apartment, they found that child's diaper bag and its contents had a strong odor of gasoline. Gasoline was often used by narcotics traffickers to mask the smell of narcotics. Mother was arrested once again. Father, mother, and two of child's paternal uncles were indicted by federal authorities on narcotics trafficking charges.

DCFS detained child in protective custody and placed her with A.D. in the home of A.D.'s paternal grandmother. On March 18, 2008, DCFS filed a petition pursuant to section 300 with respect to child. DCFS alleged four counts. Counts (a)(1) and (b)(3) both alleged that mother had a history of domestic violence with K.D. Count (b)(1) alleged that, in May 2007, child's parents had created a detrimental and endangering home environment with respect to child's sibling, A.D., by engaging in the sale of methamphetamine from the home; that A.D. was a dependent of the juvenile court as a result; and that child's parents were both incarcerated on drug-related charges. Count (b)(2) alleged that mother had a history of substance abuse and drug-related criminal activity that periodically rendered her incapable of providing regular care for child and endangered child's physical and emotional health and safety. The juvenile court ordered child detained.

B. Jurisdiction/Disposition

In June 2008, DCFS reported that father and mother both remained in federal custody. A superseding indictment had been filed alleging 40 counts relating to the manufacture and sale of methamphetamine by the Puente 13 street gang. Father and mother were among the 22 defendants named in the indictment. The indictment alleged, among other things, that father had continued to oversee the gang's drug operation during his incarceration.

On August 6, 2008, the juvenile court held a 12 month review hearing with respect to A.D. and a contested jurisdictional hearing with respect to child. With respect to A.D., the juvenile court found that mother had not made significant progress or demonstrated the ability to comply with her case plan, and that the conditions that had necessitated A.D.'s detention continued to exist. The juvenile court terminated mother's reunification services and set a permanency planning hearing.[2]

With respect to child, the juvenile court received into evidence DCFS's reports from March 17, 2008 through August 6, 2008 and the attachments thereto, as well as Department of Justice records relating to father. Mother presented no evidence at the hearing, but her attorney argued that the juvenile court should dismiss the petition because the factual allegations concerned matters that had occurred before child was born and that were remote in time.

The juvenile court dismissed count (a)(1), but found true the jurisdictional allegations in counts (b)(1), (b)(2) and (b)(3). The juvenile court stated that, although count (b)(1) referred to the events leading to mother's arrest in May 2007, she had been arrested on drug trafficking charges twice since then, and when mother was arrested in March 2008 the child's diaper bag had smelled of gasoline. Because mother continued to engage in similar conduct, there was sufficient evidence to find that child was at risk. With respect to counts (b)(2) [substance abuse] and (b)(3) [domestic violence], the juvenile court stated that the conduct alleged had been issues in A.D.'s case that mother had failed to resolve, resulting in the termination of her reunification services with respect to A.D.

The juvenile court ordered that mother was to receive reunification services with respect to child. Mother's attorney asked that mother not be required to participate in individual counseling because her drug rehabilitation would "help address any issues,"

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[2] Mother filed a notice of intent to file a writ petition with respect to the juvenile court's orders concerning A.D. The record does not reflect whether mother filed a writ petition. Counsel for mother represents that mother did not file a writ petition and that a writ proceeding has been designated as "nonoperative."

and because the domestic violence alleged in the petition had occurred more than a year before. The juvenile court stated it "completely disagree[d]" and that mother's issues were "far more than just using or being around drugs." The juvenile court ordered mother to take a parenting education class; to obtain drug counseling; to submit to drug testing; to participate in Narcotics Anonymous or Alcoholics Anonymous; and to attend individual counseling "to address case issues." Mother timely appealed.
(§ 395, subd. (a)(1).)

DISCUSSION

A. Jurisdictional Findings

Mother argues that there was no substantial evidence to support the juvenile court's jurisdictional finding with respect to count (b)(3) that mother's history of domestic violence presented a substantial risk of harm to child. We need not consider mother's argument, however, because mother does not challenge the juvenile court's jurisdictional findings with respect to counts (b)(1) and (b)(2). A single jurisdictional finding is sufficient to sustain the juvenile court's exercise of jurisdiction over a minor. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72; *In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-76.) If one jurisdictional finding is supported by substantial evidence, the sufficiency of the evidence supporting any other jurisdictional findings becomes moot. (*In re Jonathan B., supra,* 5 Cal.App.4th at p. 875.) Accordingly, we affirm the juvenile court's exercise of jurisdiction over child.

B. Disposition Order

1. Standard of Review

We review the juvenile court's disposition order for an abuse of discretion. "'[T]he juvenile court has broad discretion to determine what would best serve and

protect the child's interest and to fashion a dispositional order in accordance with this discretion. [Citations.]'" (*In re Corrine W.* (2009) 45 Cal.4th 522, 532; accord, *In re A.E.* (2008) 168 Cal.App.4th 1, 4; *In re Neil D.* (2007) 155 Cal.App.4th 219, 225.) A trial court abuses its discretion only if its decision is arbitrary, capricious or patently absurd. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *In re Shirley K.* (2006) 140 Cal.App.4th 65, 71.) We review for substantial evidence the findings of fact on which the disposition order is based. (*In re Jasmin C.* (2003) 106 Cal.App.4th 177, 180.)

2. Domestic Violence Counseling

Pursuant to section 362, subdivision (c), "[t]he juvenile court may direct any and all reasonable orders to the parents . . . of the [dependent] child . . . as the court deems necessary and proper to carry out the provisions of this section . . . . That order may include a direction to participate in a counseling or education program . . . . The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300." Mother argues that the juvenile court erred by ordering mother to attend domestic violence counseling[3] because mother's history of domestic violence was not one of the conditions that led to child's detention and long preceded the child's birth. We perceive no error.

The juvenile court's authority in fashioning a disposition order is not limited to the issues raised by its jurisdictional findings. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008 (*Christopher*), cited with approval in *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018.) "[W]hen the court is aware of other deficiencies that impede the parent's ability to reunify with his [or her] child, the court may address them in the reunification plan." (*Christopher, supra*, 50 Cal.App.4th at p. 1008.) A juvenile court

[3] The juvenile court ordered mother to obtain individual counseling to "address case issues." The parties agree that domestic violence was one such issue. Mother's attorney in the juvenile court objected specifically to the domestic violence component of such counseling.

has broad discretion to fashion a disposition order that addresses known issues harmful to the well-being of the child, even when those issues are not the direct cause of the child's detention. (*Ibid.*)

In *Christopher, supra,* 50 Cal.App.4th 1001, for example, the juvenile court found insufficient evidence to sustain the jurisdictional allegation that a father's alcohol abuse created a risk to the minor. (*Id.* at p. 1005.) The juvenile court sustained two other jurisdictional allegations unrelated to father's alcohol abuse. (*Ibid.*) In making its disposition order, however, the juvenile court found that—although not a basis for exercising jurisdiction—there was sufficient evidence that the father had substance abuse issues. (*Id.* at pp. 1005-1006.) The juvenile court ordered the father to undergo a substance abuse evaluation, to participate in any recommended treatment, and to submit to random drug or alcohol testing. (*Id.* at p. 1005.) The father appealed, arguing that the juvenile court had no authority to order the father to engage in drug treatment or testing because the father's alcohol abuse was not a basis for the juvenile court's jurisdiction. (*Id.* at p. 1006.)

The Court of Appeal rejected the father's argument and affirmed the disposition order. (*Christopher, supra,* 50 Cal.App.4th at pp. 1007-1008.) The court observed that, although section 362, subdivision (c) requires that a reunification plan "be designed to eliminate those conditions that led to the court's" jurisdictional order, "[t]he reunification plan ""'must be appropriate for each family and be based on the unique facts relating to that family.'" [Citation.] " (*Id.* at p. 1006.) There was substantial evidence to support the juvenile court's finding that the father had a substance abuse problem. (*Id.* at p. 1007.) "[W]hen the [juvenile] court is aware of other deficiencies that impede the parent's ability to reunify with his child, the court may address them in the reunification plan. In this case, given appellant's repeated driving under the influence convictions and positive blood test for methamphetamine, the [juvenile] court would have been remiss if it failed to address appellant's substance abuse even though that problem had not yet affected his ability to care for Christopher. The [juvenile] court reasonably concluded

appellant's substance abuse was an obstacle to reunification that had to be addressed in the reunification plan." (*Id.* at p. 1008.)

In this case, even if there was no evidence that domestic violence actually had put child at risk, there was substantial evidence that mother's propensity for domestic violence was an obstacle to mother's reunification with child. Mother's propensity for domestic violence had been an issue in the proceedings with respect to A.D., and her failure to remedy that issue had been one reason the juvenile court had terminated mother's reunification services with respect to A.D. Mother's criminal history indicated that she had been arrested for spousal battery in 2001, and that she had been charged with battery three times between 1998 and 2003, with at least one conviction. Mother and K.D. told DCFS that they "got into it" when they were together. Mother said that she "may have had a busted lip and he [K.D.] might have had one too." Mother and K.D. previously had been required by a criminal court to take anger management and domestic violence classes.

Further, mother's issues with domestic violence were not, as mother contends, in the distant past. Mother and K.D. had a "violent confrontation" in July 2007, during a monitored visit with A.D. After that confrontation, mother agreed to domestic violence counseling as part of her case plan to reunify with A.D., but she did not complete a domestic violence program. The juvenile court could be concerned that such an incident might recur if mother was released from her incarceration—child and A.D. had been designated as a sibling group by the juvenile court, and they were placed together in the home of K.D.'s mother, who was attempting to adopt A.D. K.D. also resided in that household. The juvenile court reasonably could conclude that mother's propensity to domestic violence was an obstacle to her reunification with child.

3. Reasonable Case Plan

Mother argues that the juvenile court's disposition order must be reversed because DCFS failed to investigate the reunification services available to mother at her place of incarceration prior to the disposition hearing. (§ 361.5, subd. (e)(1).) Mother forfeited

that contention, however, by failing to object to the disposition order on this basis in the juvenile court. (*In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1110; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222; *In re Elijah V.* (2005) 127 Cal.App.4th 576, 582; see *In re S.B.* (2004) 32 Cal.4th 1287, 1293 ["a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court"].)

Even if we were to consider mother's argument, mother has failed to demonstrate prejudice. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475; see *In re Celine R.* (2003) 31 Cal.4th 45, 59 ["error must be prejudicial under the proper standard before reversal is appropriate"]; see also *In re James F.* (2008) 42 Cal.4th 901, 918-919; *Nickolas F. v. Superior Court* (2006) 144 Cal.App.4th 92, 119.) It is not enough for mother to speculate that she *might* have been prejudiced by the error; her burden is to show that she *has* been prejudiced. (*In re Esmeralda S.* (2008) 165 Cal.App.4th 84, 96; see also *In re Enrique G.* (2006) 140 Cal.App.4th 676, 686-687.)

Mother is correct that she is entitled to receive reasonable reunification services. (§ 361.5, subd. (e)(1) [reasonable reunification services required for incarcerated parent unless juvenile court finds such services would be detrimental to child]; see *In re Kevin N.* (2007) 148 Cal.App.4th 1339, 1343; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1011; *In re Monica C.* (1995) 31 Cal.App.4th 296, 305-306; *In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1406; see also *Edgar O. v. Superior Court* (2000) 84 Cal.App.4th 13, 17.) Mother is also correct that, in determining what reunification services are reasonable, DCFS must document and the juvenile court must consider whether and to what extent mother's incarceration is a barrier to reunification. (§ 361.5, subd. (e)(1).)[4]

[4] Section 361.5, subdivision (e)(1) provides, "In determining the content of reasonable services, the court shall consider the particular barriers to an incarcerated . . . parent's access to those court-mandated services . . . , and shall document this information in the child's case plan." That section further provides, "An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the reunification service plan *if actual access to these services is provided*. The social worker *shall document* in the child's case plan the particular

But there is no indication in the record that mother would *not* have access to reasonable reunification services if she remained incarcerated during some or all of the reunification period. Mere speculation that mother *might* not have access to such services is not a sufficient basis to reverse the disposition order.

Moreover, as DCFS points out, the error mother asserts is likely to be cured during the reunification period. The juvenile court is required to hold periodic review hearings. (§ 366, subd. (a)(1); see *Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 843.) At each review hearing, the juvenile court must determine, among other things, whether DCFS has made reasonable efforts to assist mother in her reunification efforts and the extent of mother's progress toward alleviating or mitigating the causes that led to child's detention. (§§ 366, subd. (a)(1)(B), (E); 366.21, subds. (e) [six month review], (f) [12 month review]; 366.22, subd. (a) [18 month permanency review].) In making those determinations, "the court shall consider the particular barriers to an incarcerated . . . parent's access to . . . court-mandated services . . . ." (§ 361.5, subd. (e)(1); see §§ 366.21, subds. (e), (f); 366.22, subd. (a); see also *In re Maria S.* (2000) 82 Cal.App.4th 1032, 1040 [reunification services inadequate when, inter alia, "the record is devoid of any evidence to suggest what services, if any, were identified as available or offered to appellant during her incarceration"]; *Mark N. v. Superior Court, supra,* 60 Cal.App.4th at p. 1013 ["the department should, at a minimum, have contacted the relevant institutions to determine whether there was any way to make services available to the father"]; *In re Monica C., supra,* 31 Cal.App.4th at p. 307 [child welfare agency's obligation to provide reasonable services "obviously entails the preliminary task of identifying services available to the [incarcerated] parent"].)

In other words, at each periodic review hearing, DCFS will be required to document and the juvenile court will be required to consider whether and to what extent reunification services are available to mother, and mother will have the opportunity to

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barriers to an incarcerated or institutionalized parent's access to those court-mandated services . . . ." (§ 361.5, subd. (e)(1), italics added.)

argue that her case plan should be adjusted to reflect mother's particular circumstances. If mother is adversely affected by the juvenile court's determinations at a review hearing, she may seek appellate review of the juvenile court's orders. (§ 395, subd. (a)(1); see *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1152-1153; *In re Cicely L.* (1994) 28 Cal.App.4th 1697, 1705.) In addition, if circumstances warrant, mother may seek modification of her case plan pursuant to section 388. As a result, mother has failed to demonstrate that she has been prejudiced by the juvenile court's disposition order.

DISPOSITION

The orders are affirmed.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.